



This document is scheduled to be published in the Federal Register on 11/25/2014 and available online at <http://federalregister.gov/a/2014-27659>, and on FDsys.gov

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 53

[FAC 2005-78; FAR Case 2014-011; Item II; Docket No. 2014-0011; Sequence No. 1]

RIN 9000-AM83

Federal Acquisition Regulation: Streamlining Claims Processing

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement the Streamlining Claims Processing for Federal Contractor Employees Act which amends the United States Code (U.S.C.) to transfer certain functions from the Government Accountability Office (GAO) to the Department of Labor (DOL) relating to the processing of claims for the payment of workers who were not paid appropriate wages under certain provisions of the U.S.C.

DATES: Effective: **[Insert date 30 days after publication in the FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb,
Procurement Analyst, at 202-501-0650 for clarification of
content. For information pertaining to status or
publication schedules, contact the Regulatory Secretariat
at 202-501-4755. Please cite FAC 2005-78, FAR Case 2014-
011.

SUPPLEMENTARY INFORMATION:

I. Background

The Streamlining Claims Processing for Federal Contractor Employees Act (the Act) (Pub. L. 113-50) was enacted on November 21, 2013. The Act transfers certain administrative authorities relating to the processing of claims for the payment of workers who were not paid appropriate wages under certain provisions of title 40 U.S.C. from the GAO to the DOL. One of the specific functions transferred to the DOL at 40 U.S.C. 3144 and 3703 is the authority to pay certain wages. FAR part 22, Application of Labor Laws to Government Acquisitions, which addresses the withholding or suspending of contract payments and the disposition of such payments, requires revision to be consistent with the Act. Specifically, FAR 22.406-9, Withholding from or suspension of contract payments, at paragraph (c), includes instructions regarding the disposition of contract payments that have been

withheld or suspended. Also, FAR 22.406-11, Contract terminations, includes instructions for submitting reports when terminations result from violation of labor standards clauses. This final rule revises these FAR sections to appropriately reflect the administrative authorities of the DOL, and to provide a link to the DOL website and guidance for disbursement of withheld funds. Reference to Standard Form (SF) 1093, Schedule of Withholdings Under the Construction Wage Rate Requirements Statute (40 U.S.C. Chapter 31, Subchapter IV, Section 3144) and/or the Contract Work Hours and Safety Standards Statute (40 U.S.C Chapter 37, Section 3703), is deleted. The SF 1093 was previously used to disburse funds to the GAO and is now obsolete.

II. Publication of this final rule for public comment is not required by statute

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures

of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it has no effect on contractors or offerors. This rule only revises the regulation by accurately reflecting that the DOL is the administrative authority for certain functions that were formerly the function of the GAO. These requirements affect only the internal operating procedures of the Government.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR Parts 22 and 53

Government procurement.

Dated: November 17, 2014.

William Clark,
Acting Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22 and 53 as set forth below:

1. The authority citation for 48 CFR parts 22 and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

**PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT
ACQUISITIONS**

2. Amend section 22.406-9 by revising paragraphs (c)(1) and (3) to read as follows:

22.406-9 Withholding from or suspension of contract payments.

* * * * *

(c) Disposition of contract payments withheld or suspended—(1) Forwarding wage underpayments to the Secretary of Labor. Upon final administrative determination, if the contractor or subcontractor has not made restitution, the contracting officer must follow the Department of Labor guidance published in Wage and Hour Division, All Agency Memorandum (AAM) No. 215, Streamlining Claims for Federal Contractor Employees Act. The AAM No. 215 can be obtained at <http://www.dol.gov/whd/govcontracts/dbra.htm>; under Guidance there is a link for All Agencies Memoranda (AAMs).

* * * * *

(3) Limitation on returning funds. If the Department of Labor requested the withholding or if the findings are disputed (see 22.406-10(e)), the contracting officer must not return the funds to the contractor without approval by the Department of Labor.

* * * * *

22.406-11 [Amended]

3. Amend section 22.406-11 by removing from the introductory paragraph ", and the Comptroller General".

PART 53—FORMS

4. Amend section 53.222 by revising the section heading; and removing and reserving paragraph (d) to read as follows:

53.222 Application of labor laws to Government acquisitions (SF's 307, 1413, 1445, 1446, WH-347).

* * * * *

53.301-1093 [Removed]

5. Remove section 53.301-1093.

[BILLING CODE 6820-EP]

[FR Doc. 2014-27659 Filed 11/24/2014 at 8:45 am;
Publication Date: 11/25/2014]